

Message Text

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UNCLAS SECTION 1 OF 3 USUN 2024

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FROM: US DEL LOS

E.O. 11652: N/A

TAGS: P/LOS

SUBJ: LOS CONFERENCE -- WEEKLY REPORT, WEEK OF JUNE 13 -
JUNE 17, 1977

1) COMMITTEE I CHAIRMAN ENGO RELEASED A NEW TEXT ON A
SYSTEM OF EXPLOITATION PREPARED BY MINISTER EVENSEN.
COMMITTEE II CONTINUED WORK IN SMALL CONSULTING GROUPS
ON THE MAJOR OUTSTANDING ISSUES. REVIEW OF THE POLLUTION
TEXT IN COMMITTEE III ALSO CONTINUED. END SUMMARY

2) COMMITTEE I

A. THE MAJOR DEVELOPMENT IN COMMITTEE I CAME ON JUNE
17 WHEN CHAIRMAN ENGO RELEASED UNCHANGED THE LATEST
EVENSEN TEXT DEALING WITH KEY ASPECTS OF THE DEEP SEABED
REGIME. MINISTER JENS EVENSEN (NORWAY) HAD SUBMITTED
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HIS FINAL REVISION TO ENGO ON JUNE 11, AT THE CONCLU-
SION OF THREE WEEKS OF COMMITTEE DISCUSSIONS.

B. THE TEXT REPRESENTS EVENSEN'S PERSONAL EFFORT TO FIND
A COMPROMISE FORMULA ON RESOURCE POLICY (E.G. PRODUCTION
CONTROLS), THE SYSTEM OF EXPLOITATION (E.G. STATE AND
PRIVATE PARTY ACCESS RIGHTS TO THE SEABED), FINANCIAL
ARRANGEMENTS (E.G. REVENUE AND FINANCING OF THE ENTER-

PRISE) AND A REVIEW CONFERENCE (AFTER 20-25 YEARS).

ON BALANCE, THE LATEST EVENSEN TEXT REPRESENTS AN IMPROVEMENT OVER EARLIER VERSIONS. NEVERTHELESS, IT STILL CONTAINS A NUMBER OF SERIOUS FLAWS.

C. THE MOST TROUBLESOME ASPECTS OF THE REVISED EVENSEN TEXT CONCERN THE BASIC STRUCTURE OF THE SYSTEM OF EXPLOITATION AND THE ISSUE OF PRODUCTION CONTROLS. EVENSEN'S FORMULATION RETAINS AN AMBIVALENCE ON THE MATTER OF THE EXPLOITATION SYSTEM, ASSERTING ON THE ONE HAND THAT ALL MINING ACTIVITIES WOULD BE "CONDUCTED" BY THE AUTHORITY BUT ON THE OTHER HAND PROVIDING FOR DIRECT ACCESS BY STATE AND PRIVATE ENTITIES. THE PRODUCTION CONTROL ALSO LIMITS SEA BED PRODUCTION BY TWO-THIRDS OF THE PROJECTED CUMULATIVE GROWTH SEGMENT OF THE NICKEL MARKET, PARED TO THE 75 PERCENT CEILING IN EVENSEN'S EARLIER VERSION. THE US HAD REPEATEDLY ASSERTED ITS STRONG OPPOSITION TO ANY ARTIFICIAL LAND/SEA DIVISION OF THE GROWTH MARKET FOR MINERALS CONTAINED IN THE SEABED. WHILE RECOGNIZING THE LEGITIMATE CONCERNS OF DEVELOPING COUNTRY LAND-BASED PRODUCERS, WE HAVE MAINTAINED THAT ANY PRODUCTION LIMIT SHOULD BE DESIGNED ONLY TO PROTECT COOPER AND NICKEL PRODUCTION LEVELS ON LAND. THE RELATIVE COMPETITIVENESS OF LAND VERSUS SEABED PRODUCTION SHOULD DETERMINE THE DIVISION OF THE GROWTH SEGMENT. FURTHERMORE, GROWTH PROJECTIONS FOR THE NICKEL AND COOPER MARKETS SUGGEST THAT THERE IS AMPLE ROOM FOR EXPANSION OF LAND PRO-

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DICATION AS WELL AS FOR DEVELOPMENT OF SEABED RESOURCES.

D. THE PACE OF COMMITTEE I MEETINGS SLOWED DURING THE WEEK, WITH ONLY FOUR DAYS OF SESSIONS, WHICH WERE OFTEN FORESHORTENED. THE MEETINGS, UNDER CHAIRMAN ENGO'S LEADERSHIP, CONSIDERED INSTITUTIONAL ARRANGEMENTS - ASSEMBLY/COUNCIL AND VOTING. THE G-77 INTRODUCED PROPOSALS DESCRIBING THE ORGANIZATION AND FUNCTIONS OF THE ASSEMBLY WITH BROAD POLICY-MAKING POWERS, SUPERIOR TO ALL OTHER ORGANS. THE DEVELOPING COUNTRIES ALSO SEEK A CONTROLLING INFLUENCE IN THE EXECUTIVE ORGAN, THE COUNCIL, IN WHICH THEIR FORMULATION WOULD PROBABLY LEAD TO DEVELOPING COUNTRIES CONTROLLING 21 OF 36 SEATS. IN BOTH OF THESE ORGANS, THE ONE NATION/ONE VOTE PRINCIPLE WOULD APPLY, ACCORDING TO THE G-7 PROPOSALS.

E. THE US RECIRCULATED ITS OWN PROPOSAL ON THE COUNCIL SUPPLEMENTING EARLIER DRAFTS OF ASSEMBLY ARTICLES. IN THE US VIEW, THE ASSEMBLY AND COUNCIL WOULD BE ESSENTIALLY STRUCTURED AS IN OTHER INTERNATIONAL ORGANIZATIONS WITH POWER TO MAKE RULES AND REGULATIONS, WITH THE FORMER PROVIDING GENERAL POLICY GUIDANCE, AND THE LATTER PERFORMING EXECUTIVE FUNCTIONS. THE COUNCIL WOULD BE PRIMARILY CONCERNED WITH DIRECTLY CONTROLLING THE OPERATION OF THE

SEABED MINING REGIME. AS SUCH IT WOULD NEED TO COMPRISE, IN ITS MAKEUP AND PROCEDURES, A PROPER BALANCE OF NATIONAL INTERESTS. THUS, THE US PROPOSAL ON THE COUNCIL CALLS FOR REPRESENTATION FROM LEADING PRODUCERS AND CONSUMERS OF THE MINERALS CONCERNED, AS WELL AS FROM OTHER INDUSTRIAL AND DEVELOPING COUNTRIES (INCLUDING SPECIAL CONSIDERATION FOR LAND LOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES). DECISIONS WOULD BE TAKEN BY A WEIGHTED VOTE GIVING PREFERENCE TO PRINCIPAL PRODUCERS AND CONSUMERS.

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FROM: US DEL LOS

F. THE UK AND THE USSR DISCUSSED THEIR OWN SUGGESTIONS FOR A COUNCIL CONSISTING OF VARIOUS CHAMBERS (E.G. INDUSTRIAL AND DEVELOPING COUNTRIES, PRODUCERS, ETC.). IN ADDITION TO AN OVERALL TWO-THIRDS MAJORITY, A MAJORITY VOTE WITHIN SEVERAL OF THESE CHAMBERS WOULD BE REQUIRED FOR COUNCIL DECISION. MOST DEVELOPED COUNTRIES TENDED TO SUPPORT EITHER THE WEIGHTED OR CHAMBERED VOTING PROPOSALS. MOST DEVELOPING COUNTRIES FAVORED AN EMPHASIS ON EQUITABLE GEOGRAPHIC DISTRIBUTION ON THE COUNCIL AS OPPOSED TO REPRESENTATION ACCORDING TO INTERESTS. THE DISCUSSIONS DURING THE PAST WEEK AND IN THE COMING WEEK WILL PROBABLY LEAD TO DRAFTING OF A NEW SUGGESTED

COMPROMISE TEXT FOR THE SEABED MACHINERY. CHAIRMAN
ENGO HAS ASKED EVENSEN TO RESUME WORK OF THE CHAIRMAN'S
NEGOTIATING GROUP TO THIS END.

3. COMMITTEE II
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THE SMALL CONSULTATIVE GROUPS PREVIOUSLY ESTABLISHED
BY THE CHAIRMAN ON THE SUBJECTS OF THE LEGAL STATUS OF
THE ECONOMIC ZONE, ON THE DEFINITION OF THE CONTINENTAL
SHELF/REVENUE SHARING BEYOND 200 MILES AND THE DELIMITATION
OF THE TERRITORIAL SEA, ECONOMIC ZONE AND CONTINENTAL SHELF
BETWEEN ADJACENT AND OPPOSITE STATES, CONTINUED THEIR WORK.
WITH RESPECT TO THE GROUP CONCERNED WITH THE LEGAL STATUS
OF THE ZONE, THERE WERE SUBMITTED VARIOUS AMENDMENTS TO
THE PERTINENT ARTICLES. IT WAS ABUNDANTLY CLEAR THAT A
CONSENSUS DOES NOT REPEAT NOT EXIST IN FAVOR OF THE HIGH
SEAS COMMENCING AT 200 MILES (ARTICLE 7 OF THE RSNT.)
THIS RECOGNITION THAT ARTICLE 75 MUST BE CHANGED IS A HEALTHY
DEVELOPMENT. THE UNITED STATES STRONGLY ADVOCATED AMEND-
MENTS THAT WILL MAKE CLEAR THAT THE ECONOMIC ZONE IS HIGH
SEAS FOR PURPOSES OTHER THAN COASTAL STATE RESOURCE AND
CERTAIN OTHER SPECIFIED RIGHTS. CERTAIN STATES CONTINUE
TO ADVOCATE THE TERRITORIALIZATION OF THE ECONOMIC ZONE.
REGARDING THE CONTINENTAL SHELF THERE WAS DEFINITE
MOVEMENT TOWARDS ACCOMMODATION RECOGNIZING A PRECISE DE-
FINITION OF THE SHELF BEYOND 200 MILES BUT A CONSENSUS DOES
NOT EXIST ON A PARTICULAR FORMULA. WITH REGARD TO REVENUE
SHARING, THERE SEEMS TO BE INCREASED SUPPORT FOR IT TO BE
BASED UPON A ROYALTY WHICH APPLIES FIVE YEARS AFTER COM-
MERCIAL PRODUCTION AT A SITE COMMENCES. THE RATES OF RE-
VENUE SHARING DISCUSSED RANGE FROM 1 - 5 PERCENT TO 1 - 7
PERCENT. THERE WAS CONTINUED DISCUSSION OF WHETHER LDC PRODUCERS
OF MINERALS OF THE SHELF BEYOND 200 MILES SHOULD CONTRIBUTE
REVENUES WITH SOME STATES SUPPORTING THAT EXEMPTION AND
CERTAIN OTHERS INDICATING THAT THE ACCOMMODATION WOULD
ONLY BE COMPLETE IF ALL CONTRIBUTED. LDCS WHICH MADE
PAYMENTS WOULD BE CONSIDERED WHEN THE REVENUES ARE DIS-
TRIBUTED. WITH REGARD TO DELIMITATION THE GROUP CONTINUED
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TO BE SPLIT BETWEEN THE ADVOCATES OF GIVING PRIMACY OF
EQUIDISTANCE AND THOSE ADVOCATING EQUITY.

4. COMMITTEE III

A. MARINE POLLUTION. WORKING GROUP DISCUSSIONS CHAIRED AS IN THE PAST BY JUAN VALLARTA OF MEXICO ARE PROCEEDING SLOWLY. IT SEEMS UNLIKELY THAT ANY MAJOR CHANGES WILL BE MADE IN THE TEXT SINCE THERE IS OPPOSITION TO ALL EXCEPT MINOR TECHNICAL CHANGES. IN GENERAL, THE OVERALL COMPROMISE TO VESSEL POLLUTION ACHIEVED IN RSNT SEEMS TO BE BE HOLDING TOGETHER.

B. MARINE SCIENTIFIC RESEARCH. DISCUSSIONS IN COMMITTEE HAVE INDICATED NO CHANGES IN BASIC POSITIONS. CHAIRMAN YANKOV IS ESTABLISHING A HEADS OF DELEGATION NEGOTIATING GROUP OF ABOUT 25 COUNTRIES TO DEAL WITH THE BASIC REGIME FOR RESEARCH IN THE ECONOMIC ZONE. IN SPITE OF OPPOSITION FROM US AND A NUMBER OF OTHERS, YANKOV ANNOUNCED A DESIRE TO USE HIS SO-CALLED TEST PROPOSAL AS THE BASIS OF DISCUSSION. THIS PROPOSAL IS MORE RESTRICTIVE THAN THE RSNT, PROVIDING A LEGAL BASIS FOR DISCRETIONARY CONTROL OF ALL SCIENTIFIC RESEARCH IN ECONOMIC ZONE.

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5. PART IV (DISPUTE SETTLEMENT). DISCUSSION CENTERED

ON ARTICLE 14 (PROMPT RELEASE OF VESSELS). (SUBSTITUTION TEXTS ALREADY PROVIDE FOR PROMPT RELEASE OF VESSELS ON LAND, EVEN WHEN LAWFULLY ARRESTED) THE KEY PROBLEM IS THAT IF PROMPT RELEASE (WITHOUT A DECISION ON THE MERITS) CAN ONLY BE SOUGHT THROUGH ARBITRATION WHEN THE COASTAL STATE HAS CHOSEN THAT PROCEDURE, IT IS NOT AN EFFECTIVE REMEDY. A SIMILAR PROBLEM RELATES TO THE RIGHT OF THE OWNER OF THE SHIP TO SEEK RELEASE, RATHER THAN DEPENDING UPON THE FLAG STATE. THE PRESIDENT PROPOSED THE FOLLOWING TEXT:

"ARTICLE 14.1: WHERE THE AUTHORITIES OF A CONTRACTING PARTY HAVE DETAINED A VESSEL FLYING THE FLAG OF ANOTHER CONTRACTING PARTY AND HAVE FAILED TO COMPLY WITH THE RELEVANT PROVISIONS OF THE PRESENT CONVENTION FOR THE PROMPT RELEASE OF THE VESSEL OR

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ITS CREW UPON THE POSTING OF A REASONABLE BOND OR OTHER SECURITY, THE QUESTION OF RELEASE FROM DETENTION MAY BE BROUGHT BEFORE ANY COURT OR TRIBUNAL AGREED UPON BY THE PARTIES. FAILING SUCH AGREEMENT WITH ONE WEEK FROM THE TIME OF DETENTION, THE QUESTION OF RELEASE MAY BE BROUGHT BEFORE ANY COURT OR TRIBUNAL ACCEPTED BY THE DETAINING STATE UNDER ARTICLE 9 OR BEFORE THE LAW OF THE SEA TRIBUNAL, UNLESS THE PARTIES OTHERWISE AGREE."

"ARTICLE 14.2: AN APPLICATION FOR SUCH RELEASE MAY ONLY BE BROUGHT BY THE FLAG STATE OF THE VESSEL OR ON ITS BEHALF BY ANY PERSON DULY AUTHORIZED BY IT."

THE RESULT OF DISCUSSION SUBSTANCE APPEARS TO BE THE DELETION OF THE WORDS "BY ANY PERSON DULY AUTHORIZED BY IT." HOWEVER, THE WORDS "ON ITS BEHALF" WOULD STILL PERMIT THE FLAG STATE TO DESIGNATE INDIVIDUALS TO BRING VESSEL RELEASE CASES.

6. PRESS - AMBASSADOR RICHARDSON'S PRESS CONFERENCE OF JUNE 13 WAS HEAVILY ATTENDED BY THE UN PRESS CORPS. COMMENT OF DELEGATES HEARD DURING THE WEEK INDICATED IT HAS THE DESIRED EFFECT OF REINFORCING THE US STATEMENT OF DISAPPOINTMENT MADE ON THE FLOOR, ALTHOUGH, LESS THAN THE DESIRED EFFECT IN COMMUNICATING THE NOTE OF HOPE EXPRESSED IN THE PREPARED TEXT. COVERAGE OF THE PRESS CONFERENCE NOTED HERE WAS MODERATE IN THE N.Y. TIMES, N.Y. POST AND DAILY NEWS, BUT SUBSTANTIAL IN THE WALL STREET JOURNAL AND CHRISTIAN SCIENCE MONITOR.

CONGRESSIONAL VISITS - MEMBERS OF CONGRESS MET WITH
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A VARIETY OF FOREIGN DELEGATES DURING REPORTING PERIOD.
ON JUNE 13, SENATOR JACOB JAVITS (R-N.Y.), AND CONGRESS-
MEN GILMAN (R-N.Y.) MCCLOSKEY (R-CALIF.) AND PRITCHARD
(R-WASH.) MET WITH LEADERS OF THE LATIN AMERICAN STATES
ON COMMITTEE I ISSUES. CONGRESSMAN FRASER (D-MINN.) AND
SENATOR GRAVEL (D-ALASKA) AND ALL OF THE ABOVE MET
WITH MEMBERS OF THE JAPANESE DIET ON LOS AND OTHER ISSUES
OF MUTUAL INTEREST. SENATOR JAVITS MET PRIVATELY WITH SE-
NATOR MOHRI TO DISCUSS US-JAPANESE RELATIONS. ON JUNE 15,
CONGRESSMEN MURPHY MET WITH MEMBERS OF THE CANADIAN PARLI-
MENT. DISCUSSION CONCERNED PRIMARILY CONSIDERATION BY
CONGRESS OF THE US/CANADIAN INTERIM FISHING AGREEMENT.
YOUNG

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